

Robert Crema – February 9, 2021

Page 1

4 IN RE:

5 CUSTOMS AND TAX ADMINISTRATION OF  
6 THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
SCHEME LITIGATION

8 This document relates to case nos.  
19-cv-01783; 19-cv-01788; 19-cv-01798; 19-cv-01918

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15 REMOTE VTC VIDEO TAPE DEPOSITION UNDER O&R

## EXAMINATION OF

ROBERT CREMSE

15 DRAFT: February 1, 2021

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25 REPORTED BY: MICHAEL FRIEDMAN, CCR

Robert Crema – February 9, 2021

Page 12

1 R O B E R T C R E M A ,  
2 called as a witness, having been first  
3 duly sworn according to law, testifies as follows:

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7 EXAMINATION BY MR. OXFORD:

8 Q Good morning, Mr. Crema. My name  
9 is Neil Oxford. I work at a firm called  
10 Hughes, Hubbard & Reed. We represent the  
11 plaintiff SKAT in this case. It's nice to  
12 meet you.

13 How are you doing today?

14 A I'm doing fine, thank you.

15 Q Great. And where am I talking to  
16 you this morning? You're in Florida, I  
17 understand?

18 A That is correct.

19 Q Where in Florida are you located?

20 A Naples, Florida.

21 Q Lovely. And how long -- withdrawn.

22 Are you a resident of Naples?

23 A Yes.

24 Q How long have you been a resident  
25 of Naples?

Robert Crema – February 9, 2021

Page 26

1 trading as well?

2 A No.

3 Q Did Acer have specialists in  
4 dividend arbitrage trading?

5 A Well, we were a small firm. It was  
6 always usually one person that traded.

7 Q And who was that one person?

8 A What specific year?

9 Q That's a good question. Let's do  
10 2012 through 2014.

11 A It would be Stacey Kaminer.

12 Q Okay. And prior to that, was  
13 someone else responsible for the trading  
14 aspects of the dividend arbitrage?

15 A Yes. Daniel Kaminer.

16 Q Okay. And did Stacey Kaminer take  
17 over after Mr. Kaminer passed away?

18 A That is correct.

19 Q Okay. And when was that? Sometime  
20 around 2003?

21 A Yeah, yes.

22 Q Okay. Were you managing partner of  
23 Acer at some point?

24 A Managing partner? Managing  
25 partner?

Robert Crema - February 9, 2021

Page 52

1 Q Did you take notes of that call or  
2 do you know if Stacey did?

3 A Take notes? I don't recall.

4 Q Had you or Ms. Kaminer worked with  
5 Victoria Foster at her previous employer?

6 A Yes.

7 Q And her previous employer was who?

8 A I believe it was MF Global.

9 Q So did Ms. Foster move from  
10 MF Global, when that went bankrupt, to  
11 ED&F Man?

12 A Yes. To my knowledge, yes.

13 Excuse me.

14 Q And in fact, it's true, is it not,  
15 that it wasn't just Ms. Foster, it was the  
16 whole desk --

17 A That correct.

18 Q The whole desk moved from ED&F --  
19 from MF Global to ED&F Man?

20 MR. BLESSINGTON: I just caution  
21 you again. Let Neil finish the  
22 question, please.

23 THE WITNESS: Yeah.

24 MR. OXFORD: Thanks, John.

25 A What was the question?

Robert Crema - February 9, 2021

Page 53

1 Q The question was whether the whole  
2 desk moved from MF Global to ED&F Man.

3 A Yes, to my knowledge, the whole  
4 desk moved with her.

5 Q Okay. So once Ms. Foster got her  
6 feet under the desk at ED&F Man, she reached  
7 out to you and Ms. Kaminer.

8 Correct?

9 A Yes.

10 Q Okay. Did they ever send you some  
11 sort of written materials or presentation or  
12 a pitch book?

13 A Not that I recall.

14 Q Okay. So can you tell me  
15 everything you can about that initial  
16 approach by Ms. Foster?

17 A Well, I guess, bottom line, it was  
18 a generic call at first. We -- we cared for  
19 her very much. We enjoyed doing business  
20 with her at MF Global.

21 And there wasn't much to add, other  
22 than she took her whole show, if you will,  
23 and all her desk, to perform the same  
24 functions that she had at MF Global. In  
25 other words, she had access to their capital.

Robert Crema – February 9, 2021

Page 54

1                   They wanted to engage in all this  
2                   type of business that MF Global was doing.  
3                   So there wasn't really that much to discuss  
4                   with her other than the opportunity to do  
5                   business direct with us. In other words,  
6                   introduce our pension funds, any proprietary  
7                   trading that we might have engaged in.

8                   It was all on the table. But it  
9                   wasn't like a new -- brand new type of  
10                  business.

11                  Q     I see. So had the Acer plans,  
12                  those nine plans, conducted dividend  
13                  arbitrage trading through MF Global?

14                  A     I don't know if they all did.

15                  Q     But some of them did?

16                  A     Yeah, yeah.

17                  Q     And that was facilitated through  
18                  Acer?

19                  A     Yes.

20                  Q     Okay. So is it fair to say what  
21                  Ms. Foster was proposing to you and  
22                  Ms. Kaminer was that now that the desk has  
23                  moved from MF Global to ED&F Man, the same  
24                  relationship and the same type of trading  
25                  continue?

Robert Crema - February 9, 2021

Page 55

1                   MR. BLESSINGTON: Object to the  
2                   form. You can answer.

3                   A    Correct.

4                   THE WITNESS: I'm sorry.

5                   MR. BLESSINGTON: That's all right.

6                   A    Yes, yes.

7                   Q    Okay.

8                   A    Just wanted to move the whole show  
9                   over to the new firm.

10                  Q    Okay.

11                  A    Not reinvent the wheel or anything.

12                  Same business.

13                  Q    Right. If it ain't broke, why fix  
14                  it?

15                  A    Yeah, exactly.

16                  Q    So you mentioned earlier that ED&F  
17                  had the "sellers."

18                  What did you mean by that?

19                  A    Had the -- well, again, to my  
20                  knowledge, and I would defer to Stacey  
21                  Kaminer on this, because again, I didn't do  
22                  the trading.

23                  But obviously there was -- they're  
24                  clearing the trade, so we had to buy the  
25                  stock from somebody. And I'm assuming that

Robert Crema - February 9, 2021

Page 57

1                   It actually depended on the  
2                   financing that they could provide. Sometimes  
3                   they had financing, sometimes they didn't.

4                   When they didn't, we didn't do any  
5                   business.

6                   Q     Okay. And by "they," you mean  
7                   ED&F?

8                   A     I'm sorry. Yes, yes.

9                   Q     So that actually -- that  
10                  anticipates what was going to be my next  
11                  question.

12                  The size of positions that the Acer  
13                  plans ultimately took in Danish securities  
14                  were quite substantial, in the tens,  
15                  sometimes hundreds of millions of dollars.

16                  Correct?

17                  A     Uh-huh.

18                  Q     Is that a "yes?"

19                  A     Yes.

20                  Q     And the pension plans themselves,  
21                  the Acer plans, didn't have enough money to  
22                  buy those stocks outright.

23                  Correct?

24                  A     Correct.

25                  Q     Some of those plans might have been

Robert Crema - February 9, 2021

Page 58

1 a few hundred thousand dollars in their  
2 accounts, some of them might have a few  
3 million, but they certainly didn't have  
4 enough money to purchase those Danish  
5 security positions they ultimately did.

6                   Correct?

7                   A    Correct.

8                   Q    And was it your understanding of  
9                   the scheme that ED&F would facilitate the  
10                  purchase, by the Acer plans, of the Danish  
11                  plans by providing financing?

12                  MR. BLESSINGTON: Object as to  
13                  form. You may answer.

14                  A    Well, again, I wasn't involved in  
15                  the trades, so there's a lot of different  
16                  ways to finance.

17                  Q    Yeah. My question isn't how they  
18                  did it. My question is whether they did it.

19                  MR. BLESSINGTON: Object as to  
20                  form.

21                  A    Whether they did financing?

22                  Q    Let me just ask it again so we have  
23                  a clean record.

24                  A    Yeah, I'm not clear.

25                  Q    Was it your understanding -- and I

Robert Crema – February 9, 2021

Page 59

1 know that you were not involved in  
2 implementing the trading, but you -- you had  
3 some meetings with Victoria Foster and her  
4 team.

5 A Right.

6 Q And you were aware that Acer had  
7 done similar trading through MF Global.

8 Based on your understanding, did  
9 you believe that the way -- the only way that  
10 Acer could afford to buy these substantial  
11 positions in Danish securities was that  
12 ED&F Man agreed to facilitate that by  
13 providing financing?

14 A Yes, that was my understanding.

15 Q Okay. And do you know how that  
16 financing operated?

17 A No.

18 Q Okay. Was Acer, to your knowledge,  
19 ever involved in identifying or locating  
20 securities that would ultimately be purchased  
21 by the Acer plans?

22 A Repeat it, please?

23 Q To your knowledge, was Acer ever  
24 involved in identifying the Danish securities  
25 that were ultimately to be purchased by the

Robert Crema – February 9, 2021

Page 90

1           Q    Okay. And was the purpose of this  
2    power of attorney, and the others like it  
3    signed by the other Acer plans to permit  
4    Acer, on behalf of the plans, to pursue a  
5    dividend arbitrage strategy and submit  
6    reclaims for withheld tax to the Danish  
7    government?

8                    MR. BLESSINGTON: Object as to  
9    form. You may answer.

10           A    Yes.

11           Q    So, under this power of attorney,  
12    and the others like it, Acer was authorized  
13    to decide and to give advice on which  
14    securities your AIG plan and the other Acer  
15    plans would purchase.

16                    Correct?

17                    MR. BLESSINGTON: Object as to  
18    form. You can answer.

19           A    Yes.

20           Q    And this power of attorney  
21    authorized Acer to place orders for those  
22    same securities on behalf of Acer plans.

23                    Correct?

24           A    Correct.

25           Q    And those decisions as to which

Robert Crema – February 9, 2021

Page 91

1 securities to trade, and any ancillary  
2 financial instruments to enter into, were  
3 made with respect to the Danish trading by  
4 Ms. Kaminer and not by, for example, in this  
5 case, you as the beneficiary or trustee of  
6 the plan?

7 A It was strictly Ms. Kaminer.

8 Q Did Ms. Kaminer make the trading  
9 investment decisions in Danish securities for  
10 all of the nine Acer plans?

11 A I believe so.

12 Q And to your knowledge, was anybody  
13 else at Acer involved in making those  
14 decision?

15 A On an individual basis is the  
16 question? Or overall as a --

17 Q Just sort of generally, was anybody  
18 else involved in making the trading decisions  
19 in Danish securities on behalf of the nine  
20 Acer plans, other than Ms. Kaminer?

21 A No. She was the only one.

22 Q And presumably, if we want to learn  
23 about the factors that went into the trading  
24 decisions, which stocks to buy, when to buy  
25 them, on whose behalf, those are questions

Robert Crema – February 9, 2021

Page 163

1           A     My guess would be -- well, I don't  
2     want to guess. I'm not an attorney, so I  
3     can't answer that question.

4           Q     Yeah, I'm not, you know, trying to  
5     be tricky. I'm not asking you a legal  
6     question, sir.

7                   But you were, in fact, the trustee  
8     of this pension plan.

9                   Correct?

10          A     Right.

11          Q     Okay. And you understand, just as  
12     a general matter, that a trustee comes with  
13     certain responsibilities?

14          A     And I would carry out those  
15     responsibilities as trustee.

16          Q     Okay. And what were those  
17     responsibilities?

18          A     If you're asking me what the  
19     responsibilities are, I don't know.

20          Q     Exactly?

21          A     I'm sorry. Yeah.

22                   That, I don't know.

23          Q     Do you know whether, as of 2002 or  
24     any time subsequently, AIG, the company that  
25     sponsors the plan, has had any employees?

Robert Crema – February 9, 2021

Page 164

1 A Subsequent to 2002?

2 Q Yeah.

3 A Yeah, we had employees.

4 Q Who were those employees?

5 A Oh, boy. I don't recall.

6 Q Okay.

7 A I don't recall the staff.

8 Q What were those employees doing  
9 after 2002?

10 A Securities lending, general  
11 accounting, supporting the office, trading,  
12 trading assistance, prior to 2002.

13 Q Okay. And after 2002?

14 A After -- after Mr. Kaminer passed  
15 on, we were -- ran very thin with people.

16 There was only four or five of us after that.

17 Q Okay. So I just want to make sure  
18 I have your testimony as best you recall.

19 After October of 2002, did AIG, the  
20 company, have any employees?

21 MR. BLESSINGTON: Object as to  
22 form.

23 A AIG, the company? Well, AIG, the  
24 company, I'm going to answer that in this  
25 way.

Robert Crema - February 9, 2021

Page 165

1                   After Acer came into being, Acer  
2                   had the employees, if any. AIG had none.

3                   Q    Okay. And -- thank you. That's a  
4                   helpful answer.

5                   And is it also, following that, any  
6                   business that was conducted by one of the two  
7                   companies was conducted by Acer and not AIG?

8                   MR. BLESSINGTON: Object as to  
9                   form. You can answer.

10                  A    That was done by Acer, not AIG, and  
11                  conducted by Acer?

12                  Yes. I would say yes to that.

13                  Q    Okay. Are you familiar with a  
14                  company called Moira Associates LLC?

15                  A    Yes.

16                  Q    What is that company?

17                  A    It's an investment company.

18                  Q    What kind of investment company?

19                  A    Any and all opportunities.

20                  Q    Can you give me -- can we go off  
21                  for one second?

22                  THE VIDEOGRAPHER: Stand by. The  
23                  time is 2:13 p.m. and we're going off  
24                  the record.

25                  (Brief recess taken.)

Robert Crema – February 9, 2021

Page 185

1       thing. No, no.

2                   That's my recollection.

3       Q    Okay. But it's your testimony that  
4       a trade diagram could have meant that Acer  
5       was going to provide the buy transaction and  
6       the amount.

7                   Is that right?

8       A    Yes. They call it a "diagram."  
9       It's a big rift between countries, the  
10      English language. A diagram to them is  
11      totally different than to us.

12                  A diagram could simply mean what  
13      you just said; the buy, pricing, and how much  
14      do you want to do. That's the beginning and  
15      the end of the diagram.

16                  In the states, we would take that  
17      to be a little bit more encompassing and  
18      involved. But not necessarily in the U.K.

19       Q    Okay. And then --

20       A    I understand the question.

21       Q    Okay. And then, the top e-mail  
22      that says, "I need assistance with this," am  
23      I hearing you correctly that your  
24      interpretation of that e-mail is that Stacey  
25      is asking you to help her make decisions on

Robert Crema - February 9, 2021

Page 186

1 which names the Acer plans would buy?

2 MR. BLESSINGTON: Objection. You  
3 may answer.

4 A Yes, she could be asking me that.

5 So basically, it would be participation in  
6 the -- in the entire conversation. And a lot  
7 of times, she would do this to be sure that a  
8 total of four ears on our side would hear.

9 We used to do that often. Let us  
10 both hear what is being said, and it made us  
11 feel more comfortable.

12 So when she says "I need assistance  
13 with this," it could have been just for that  
14 reason.

15 Q Okay. But Ms. Kaminer would have  
16 been the person that was primarily  
17 responsible for determining which  
18 transactions to engage in?

19 MR. BLESSINGTON: Object as to  
20 form, but you may answer.

21 A Well, we would synthesize together  
22 which trades we would like to do, that we  
23 would be interested in doing, and how big,  
24 what kind of size. But then she would take  
25 over. She's the trader, she would take it